IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL No.2838 of 2003

1.State of Tamil Nadu rep. By its
Secretary to the Government
Home Department
Fort St. George, Madras 9.

2.Jan Pasha
Sub Inspector of Police No.II
B.1 Police Station
Dharmapuri.

3.The Superintendent
Sub Jail, Dharmapuri. .. Appellants/Respondents

vs.

S. Jayalakshmi .. Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order of His Lordship Mr. Justice D. Murugesan in W.P.No.12274 of 1995 dated 25.07.2003. Presented to this Court to issue a writ of Mandamus directing the respondents to pay a compensation of Rs.5,00,000/- (Rupees five lakhs only) for taking away the life of the detenu Murugesan, the husband of the petitioner.

For appellants : Mr. P. Subramanian
Government Advocate

For respondent : Mr. R. Sankarasubbu

JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned single Judge dated 25.07.2003 made in W.P.No.12274 of 1995 granting compensation of Rs.2 lakhs in favour of the writ petitioner for the death of her husband Murugesan, the Government of Tamil Nadu and Police Department have filed the above writ appeal.

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2. The learned Government Advocate appearing for the appellants submitted that inasmuch as the deceased had stomach pain even before his arrest and he was suffering from illness for several months, his death cannot be attributed only to the negligence on the part of the Jail officials and accordingly, the order of the learned single Judge granting compensation is not sustainable.

3. On going through the materials, we are unable to accept the said contention for the following reasons. According to the respondent herein/writ petitioner, her husband Murugesan aged about 23 years was employed as 'Maistry' (Supervisor) in construction work and they had two children aged 3 and 1. The husband of the writ petitioner had no adverse record in his life. While so, when he was returning home after his work was over on 15.08.1994, he was way-laid by the second respondent and other policemen on mistaken identity and taken to police station, where he was beaten with lathi (stick). The writ petitioner was not informed of the grounds of arrest of her husband, Murugesan, and she came to know later that her husband was remanded to custody in a serious condition on 23.08.1994 with visible injuries on his body. She moved a bail application for the release of her husband, but the same was opposed by the second respondent and ultimately, was rejected and her husband was remained in prison, in the hands of the third respondent, who refused to provide appropriate medical treatment. No treatment was given to her husband during the period from 22.08.1994 to 27.10.1994 and only at the critical condition, he was taken to the Government Hospital, Dharmapuri at about 9.00 a.m. on 27.10.1994 where he was directed to be taken to Government Hospital, Salem. But, the third respondent did not take him to the said hospital immediately, however, at about 5.00 p.m. on 27.10.1994, he was taken to the Salem Government Hospital in ambulance and at that time, he was unconscious and at about 6.30 p.m. where he was admitted as inpatient in the Salem Government Hospital and ultimately he died on 28.10.1994 at about 11.00 a.m. According to the petitioner, the death was unnatural and the same occurred due to the abuse of power by the second and third respondents. The detention of her husband is illegal and the respondents 2 and 3 treated him inhumanely, resulting in his death at the young age. she therefore prayed for compensation of a sum of Rs.5 lakhs.

4. On behalf of the respondents, the Joint Secretary to Government, Public Department, Government of Tamil Nadu filed a counter affidavit wherein it is stated that the remand prisoner, viz., Murugesan was remanded by the orders of the Judicial Magistrate-I, Dharmapuri in Dharmapuri Police Station Crime No.667/94 under Section 20(b) of Narcotic Drugs and Psychotropic Substances Act on 23.08.1994 with a direction to produce him before the Special Judge, Salem on 06.09.1994. The said remand prisoner was admitted in the Sub-Jail on 23.08.1994. His remand was extended till 20.09.1994 and again, till 11.11.1994. The remand prisoner Murugesan complained of illness on 24.10.1994 and he was treated as out-patient in the Government Headquarters Hospital at Dharmapuri on 25.10.1994 and on 26.10.1994. After treatment, he was sent to Sub-jail on 27.10.1994 at 10.20 hours. He was also referred to Government Headquarters Hospital, Salem, for further treatment. Since no facilities were available in the Sub-Jail to provide escort, etc.,

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the Superintendent of Dharmapuri Sub Jail has requested the Superintendent of the Government Head Quarters Hospital, Dharmapuri to provide conveyance to transport the prisoner-patient from Dharmapuri to Government Hospital at Salem. Simultaneously, the Superintendent of Dharmapuri Sub Jail has also requested the Armed Reserve, Dharmapuri to provide necessary police escort to the prisoner from Dharmapuri to Salem and to continue escort duty at Government Hospital, Salem. The prisoner-patient was handed over to the police escort on 27.10.1994 at 15.25 hours at the Sub-jail, Dharmapuri in the presence of the Medical Officer. Thereafter, the prisoner-patient was admitted at the Government Headquarters Hospital, Salem at 18.00 hours on 27.10.1994 as in-patient. In spite of treatment given, the said prisoner died in the Government Mohan Kumaramangalam Medical College Hospital, Salem. The Revenue Divisional Officer also conducted an enquiry over the death of the remand prisoner as per the Rules. The Government accepted the report of the Revenue Divisional Officer to the effect that the death was due to jaundice, and dropped further action. The Superintendent, Sub-Jail, Dharmapuri acted according to Rules and there is no fault on his part.

5. The third respondent has filed a separate counter affidavit reiterating his stand.

6. The learned Judge, after finding that though the husband of the petitioner complained of illness even on 24.10.1994 and 25.10.1994, admittedly, he was taken to the Government Headquarters Hospital, Dharmapuri only on 27.10.1994 and after finding that because of the negligence on the part of the jail authorities and failure to give proper treatment at the relevant time, as well as taking note of the age of the deceased and his family circumstances, awarded compensation of a sum of Rs.2 lakhs. The counter affidavit filed by the second and third respondents clearly show that there are no facilities available in the Sub-jail, Dharmapuri to provide escort and to shift the prisoner from Dharmapuri to Salem. Further, as rightly pointed out by the learned Judge, though the respondents have claimed that the prisoner was taken to Government Headquarters Hospital, Dharmapuri even prior to 27.10.1994, the document viz., first O.P. chit issued by the said Hospital clearly shows that the prisoner was taken to hospital only on 27.10.1994 at 9.00 a.m.

7. Apart from the above fact that the prisoner-patient was not taken to the hospital immediately, as rightly pointed out by the learned Judge, the other serious lapse is that the respondents were not having adequate man power to shift the prisoner from Dharmapuri to Salem hospital. It is clear that the husband of the petitioner was admitted in the Government Mohan Kumaramangalam Medical College Hospital, Salem only at 6.30 p.m. on 27.10.1994, after lapse of nearly 8 hours by which time his condition became worse. Though it was pointed out that the husband of the petitioner was given treatment for his illness, as rightly observed by the learned Judge, because of the negligence on the part of the respondents in not taking the prisoner to the hospital at the right time, the prisoner-patient died. We are in agreement with the said conclusion of the learned Judge. It is unfortunate that the enquiry report of the Revenue Divisional Officer that death was due to

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jaundice was accepted by the Government and further action was dropped. It is not clear how such conclusion was arrived at by the Enquiry Officer. In the light of the admitted factual position and in view of the stand taken by the respondents 2 and 3 in the counter affidavit as well as for the reasons given by the learned Judge, we are unable to accept the claim of the learned counsel for the appellants.

8. Coming to the quantum, it is seen that at the time of death, the prisoner Murugesan was aged about 23 years and he was employed as Maistry in construction work. The petitioner is none else than his wife and she was aged about 19 years. That apart, they had two children aged 3 and 1, and it is the duty of the petitioner to look after them. Taking note of all these aspects the learned Judge, awarded compensation of a sum of Rs.2 lakhs. In such circumstances, it cannot be claimed that the amount fixed is either excessive or unreasonable and on the other hand, the same is reasonable.

In the light of what is stated above, we do not find any merit in the appeal. Consequently, the appeal is liable to be dismissed and accordingly it is dismissed. No costs. It is brought to our notice that by virtue of the interim order the appellants have paid a sum of Rs.1 lakhs on 12.05.2004 to the writ petitioner. The appellants are directed to pay the balance amount within a period of four weeks from the date of receipt of copy of this order.

kh

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Secretary to the Government of Tamil Nadu
Home Department, Madras -9.

2.The Sub-Inspector of Police No.II,
B-1 Police Station, Dharmapuri.

3.The Superintendent,
Sub-Jail, Dharmapuri.

+1 cc to the Government Pleader, Sr.No.12980.

+1 cc to Mr.R.Sankara Subbu, Advocate Sr.No.12832.

BV(CO)
dcp/16.3.07

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